

# All You Need To Know About Jury Nullification

## (but were prevented from hearing)

### What exactly is Jury Nullification?

Jury Nullification is the term given to the process where the jury of a criminal case acquits the defendant regardless if he has broken the law in question. The jury would do this in a case where they judge the law to be unjust, therefore the jury can vote to find the defendant innocent since the jury found the law itself to be immoral, unfair, unjustly applied, or unconstitutional. By voting to acquit, the jury therefore nullifies the law.

For example: say Congress passed a bill, and the President signed it, stating that the official religion of the United States is Christianity, and that no other forms of religion are to be practiced under penalty of jail. While almost 80% of the United States is Christian, the 1st Amendment clearly states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof [...]”. Our hypothetical example does both: establish and prohibit. So say someone continued to openly practice Judaism and was arrested for breaking this law. Upon trial, the prosecution laid out mountains of evidence of the defendant breaking this law and the accused got on the stand and proudly admitted his guilt. Can the jury find him not guilty? Yes. And they should.

In our hypothetical case, the law was clearly unconstitutional. Therefore, not only is the accused on trial but so is the law. *It is the responsibility of the jury to judge not just the facts of the case but also the law in question.*

While the law will still be on the books, a pattern of juries voting to acquit effectively nullifies the law.

### Has Jury Nullification ever been used in the past?

Yes! One of the earliest cases in the United States occurred before our War for Independence. In 1734, John Zenger was put on trial for seditious libel for publishing a newspaper that was critical of New York's governor, William Cosby. Zenger was arrested by Governor Cosby, and Cosby hand-picked the two judges trying the case. Zenger's Lawyer, Andrew Hamilton,

was able to convince the 12-member jury to acquit Zenger, arguing that Zenger's articles were not libelous because they were based on fact. In the end, the jury voted to acquit Zenger. In the early United States, jury nullification was used by juries who refused to convict people of violating the Fugitive Slave Act, and during Prohibition juries often refused to convict people of violating various alcohol control laws. Both of these trends of jury nullification led to significant changes in the country and the Constitution: the end of slavery with the 13th Amendment, and the repeal of the 18th Amendment by the 21st Amendment.

### So that means the jury has more power than Congress and the President?

Yes! The jury has the power to nullify any law. It also means the jury has the power to ignore previous rulings by the Supreme Court and still find the defendant not guilty if they judge the law and previous court rulings to be wrong.

### How come I haven't heard about this before?

Because for almost a century, judges have been failing to inform juries about this right and responsibility, and have gone to great lengths to keep defense attorneys from informing juries about jury nullification. In the 1895 case *Sparf v. US*, the Supreme Court ruled 5-4 that a trial judge has no responsibility to inform juries of their right & responsibility to nullify laws. Sometimes, in direct opposition to the purpose of a jury, a judge will instruct a jury to apply the law as it is given to them whether they agree with the law or not. In some situations, the judge will call a mistrial if an attempt by the defense attorney to inform the jury about this important right and responsibility. Why would they do such a thing?

In short, because it takes power away from the government and gives it to the people.

The Founding Fathers believed that the people should have power over the government to prevent exactly this sort of abuse of power.

### So if the judges keep the juries in the dark about jury nullification, what can we do?

We can inform ourselves prior to becoming a juror. We can inform other people about jury nullification. And once picked for a jury then locked in the deliberation room, we can inform the other jurors about the important right and responsibility of jury nullification.

You can start by visiting [www.jurybox.org](http://www.jurybox.org) for ideas on what action you can take. You can also download this handout as a PDF so you can print it out to help inform others.

### Why should I get involved?

You never know when you will be put on trial for breaking a law that you — and many other Americans — feel is unjust. Since the courts are keeping juries in the dark about jury nullification and do their best to keep defense attorneys and defendants from informing juries to this right, it is essential to inform potential jurors — and incoming jury pools — of this right and responsibility before the jury is seated.

### If I get selected for jury duty, should I disclose my knowledge of jury nullification to the attorneys or judge?

Only if asked. And if asked, do not lie about your knowledge. (This is a crime in and of itself.) Since knowing about jury nullification may get you excused from sitting on a jury, and the best place for informed jurors to be is on a jury rather than excused from it, the best answer to give is: “I have heard about jury nullification, but I'm not a lawyer, so I don't think I fully understand it. Maybe you could explain to me what it is?” This will typically result in either them dropping the issue entirely, or explaining it in full for other potential jurors to hear.

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